



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12th St., S.W.**  
**Washington, D.C. 20554**

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**DA 07-492**

**Released: January 31, 2007**

**WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES THAT M2Z NETWORKS, INC.'S APPLICATION FOR LICENSEE AND AUTHORITY TO PROVIDE A NATIONAL BROADBAND RADIO SERVICE IN THE 2155-2175 MHZ BAND IS ACCEPTED FOR FILING**

**WT Docket No. 07-16**

On May 5, 2006, M2Z Networks, Inc. (M2Z) filed an Application for License and Authority to Provide a National Broadband Radio Service in the 2155-2175 MHz Band (Application).<sup>1</sup> This 20-megahertz block of spectrum at 2155-2175 MHz is allocated for fixed and mobile services and designated for Advanced Wireless Services (AWS) use.<sup>2</sup> M2Z's Application has been found, upon initial review, acceptable for filing, pursuant to our general statutory authority under Section 309 of the Communications Act of 1934, as amended (the Act).<sup>3</sup> Although we are accepting M2Z's Application for filing under our general statutory authority (rather than pursuant to an established framework of processing rules), this action does not imply any judgment or view about the merits of the Application, nor does it preclude a subsequent dismissal of the Application as defective under existing rules or under future rules that the Commission may promulgate by notice and comment rulemaking.

Pursuant to Section 309(d) of the Communications Act of 1934, as amended, "any party in interest may file with the Commission a petition to deny any application...at any time prior to the day of the Commission grant thereof ... or ... formal designation ... for hearing."<sup>4</sup> Further, the Commission

<sup>1</sup> On September 1, 2006, M2Z amended the Application to incorporate by reference a separately filed Petition of M2Z Networks, Inc. for Forbearance. See Letter from W. Kenneth Ferree, Esq., to Marlene Dortch, Secretary, FCC (Amendment to Pending Application, filed Sept. 1, 2006).

<sup>2</sup> See 47 C.F.R. § 2.106 (Table of Frequency Allocations). In 2002, the Commission allocated 2165-2180 MHz for fixed and mobile services, including AWS. See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd. 2223, 2238 ¶ 28 (2002). In 2005, the Commission allocated 2155-2160 MHz for fixed and mobile services and designated the entire 2155-2175 MHz band as AWS spectrum (2160-2165 MHz was already allocated for fixed and mobile services). See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Eighth Report and Order and Fifth Notice of Proposed Rulemaking and Order*, 20 FCC Rcd 15866, 15872 ¶ 9 (2005).

<sup>3</sup> See 47 U.S.C. § 309. See also 47 U.S.C. §§ 308(a) (stating that "the Commission may grant construction permits and station licenses ... only upon written application therefore received by it") and 308(b) (requiring that Section 308(a) applications set forth "such facts as the Commission by regulation may prescribe," but not requiring the Commission to prescribe such regulations) (emphasis added).

<sup>4</sup> 47 U.S.C. § 309(d)(1).

may not act on this application “less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.”<sup>5</sup> We also note that additional applications for spectrum in this band may be filed while the M2Z application is pending.

### **Procedural Matters**

While the Application is currently not opposed or subject to competing applications, given the fact that it implicates broadly applicable policy issues, we do not believe that it would serve the public interest either to allow presentations to be made off the record or to proscribe *ex parte* presentations altogether. Accordingly, pursuant to Section 1.1200(a) of the Commission's Rules, we find that this proceeding should be treated for purposes of the *ex parte* rules as a permit-but-disclose proceeding.<sup>6</sup> Therefore, presentations regarding the Application (as well as any additional applications for this spectrum that may be filed in the future) will hereinafter be subject to the provisions of § 1.1206 governing permit-but-disclose proceedings.<sup>7</sup> Specifically, *ex parte* presentations that are made with respect to the issues involved in the Application will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b).<sup>8</sup> Parties making oral *ex parte* presentations in these proceedings are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>9</sup> More than a one-or two-sentence description of the views and arguments presented is generally required.<sup>10</sup>

### **Filing and Accessing Filings**

The Application is available for public inspection and copying in the Commission's Reference Center, Room CY A257, 445 12th Street, S.W., Washington, DC 20554. Copies of the Application also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT 07-16. Copies of the Request are also available from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Petitions, comments or additional applications may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See generally* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Petitions or comments filed through the ECFS can be sent as an electronic file via the Internet to [http:// www.fcc.gov/cgb/ecfs/](http://www.fcc.gov/cgb/ecfs/). Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic petition or comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov),

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<sup>5</sup> *Id.*

<sup>6</sup> See 47 C.F.R. §§ 1.1200(a) and 1.1206.

<sup>7</sup> 47 C.F.R. § 1.1206.

<sup>8</sup> 47 C.F.R. § 1.1206(b).

<sup>9</sup> See “Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings,” *Public Notice*, 15 FCC Rcd 19945 (2000).

<sup>10</sup> See 47 C.F.R. § 1.1206(b)(2). For further guidance regarding the requirements and content of *ex parte* submissions, *see also* Fact Sheet, “FCC’s Ex Parte Rules,” July 2001, [http://www.fcc.gov/ogc/admain/ex\\_partefactsheet.html](http://www.fcc.gov/ogc/admain/ex_partefactsheet.html). Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. *Id.* § 1.1206(b).

and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Parties shall send one copy of their filings to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (800) 378-3160, e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Petitions, or comments filed in response to this Public Notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, D.C. 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the Docket Number, WT 07-16. The petitions or comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (301) 816-0169, e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Alternate formats of this Public Notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to [access@fcc.gov](mailto:access@fcc.gov).

FOR FURTHER INFORMATION, CONTACT: Joel Taubenblatt of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418-2487, [joel.taubenblatt@fcc.gov](mailto:joel.taubenblatt@fcc.gov). All press inquiries should be directed to Chelsea Fallon, at (202) 418-7991.

Action by the Chief, Wireless Telecommunications Bureau

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